



POLICE DEPARTMENT

August 20, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective Anthony Marion  
Tax Registry No. 928705  
10 Precinct  
Disciplinary Case No. 2013-9555  
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The above-named member of the Department appeared before me on March 5, 2015, charged with the following:

1. Said Sergeant Anthony Marion, assigned to the 52nd Precinct, while on-duty, on or about April 29, 2013, at approximately 1745 hours, having been directed by New York City Police Inspector Joseph Dowling, to comply with an order failed to do so, to wit: after being instructed to come into Inspector Dowling's office, said Sergeant walked into said Inspector's office, slammed the door and stated in sum and substance, "I'm tired of this shit, I have other things to do," and when said Inspector directed said Sergeant Marion to lower his voice, said Sergeant stated, "What are you going to do suspend me," then threw his shield and gun on top of Inspector Dowling's desk while stating, "Suspend me motherfucker, I'm tired of this shit, I'm leaving."

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

P.G. 203-09, Page 1, Paragraph 2 – GENERAL REGULATIONS

2. Said Sergeant Anthony Marion, assigned to the 52nd Precinct, while on-duty, on or about April 29, 2013, at approximately 1750 hours, was discourteous to New York City Police Inspector Joseph Dowling, in that said Sergeant walked into Inspector Dowling's office, threw his two (2) Glock 9mm magazines on Inspector Dowling's desk and stated in sum and substance, "I'm tired of this shit motherfucker," and as Inspector Dowling approached Sergeant Marion, said Sergeant stated, "What are you going to do motherfucker, hit me," then said Sergeant threw his identification card at Inspector Dowling while stating, "I'm leaving."

P.G. 203-09, Page 1, Paragraph 2 – GENERAL REGULATIONS

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The Department was represented by Penny Bluford-Garrett, Esq., Department Advocate's Office, and Respondent was represented by Anthony Mahoney, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

Respondent is found Guilty of the misconduct set forth in Specifications 1 and 2.

### FINDINGS AND ANALYSIS

The following facts are not in dispute. On April 29, 2013, Respondent and Inspector Joseph Dowling were on duty at the 52<sup>nd</sup> Precinct: Respondent as a Desk Sergeant and Inspector Dowling as the Commanding Officer. On that day, among the assignments the precinct was tasked with was the location of two special category missing persons. At approximately 1600 hours, Inspector Dowling ordered Sergeant Johnson to proceed from the 52<sup>nd</sup> Precinct to the 49<sup>th</sup> Precinct to relieve Sergeant Zandro Rojas, who Inspector Dowling had ordered there earlier in the day to supervise the search operation. (Tr. 10-12, 72, 109-110)

At approximately 1700, Inspector Dowling approached Respondent, who was at the precinct desk, and inquired whether Sergeant Rojas had returned from the 49<sup>th</sup> Precinct, to which Respondent replied that he had not. When Inspector Dowling asked why Sergeant Rojas had not returned, Respondent replied that he did not know. Inspector Dowling asked where Sergeant Johnson was, since he had ordered him to relieve Sergeant Rojas approximately one hour earlier. Respondent replied that Sergeant Johnson was still outside the stationhouse because he did not have a vehicle to transport

him. Inspector Dowling told Respondent that was unacceptable and ordered Respondent to resolve the matter expeditiously. (Tr. 12-13; 114-116)

At about 1745 hours, Inspector Dowling directed Respondent to come into his office (Tr. 14, 116). When Respondent complied, he and Inspector Dowling had an acrimonious discussion, during which Respondent surrendered his shield and firearm. Respondent left the office, then returned a short time later and surrendered two additional magazines for his firearm. There was further discussion between Respondent and Inspector Dowling, after which Respondent threw his department identification card onto a couch in Inspector Dowling's office. Respondent then left his office in the company of Sergeant Kevin Kavanagh.

At issue is whether during this interaction Respondent failed to abide by Patrol Guide Section 203-03, Page 1, Paragraph 2, which requires members of service to "obey lawful orders and instructions of supervising officers" and Patrol Guide Section 203-09, Page 1, Paragraph 2, which requires members of service to "be courteous and respectful."

Respondent's account differs from Dowling's version of events. Therefore, resolution of this matter rests in large part on a determination of witness credibility. In analyzing credibility, this tribunal may consider such factors as witness demeanor, consistency of witness testimony, supporting or corroborating evidence, witness motivation, bias or prejudice, and the degree to which a witness' account comports with common sense and human experience. *Department of Correction v. Hansley*, 169 A.D.2d 545, 564 N.Y.S.2d 398 (1st Dep't 1991)

The Department called Inspector Joseph Dowling, whose testimony is summarized below. According to Inspector Dowling, at about 1700 on April 29, 2013,

he left the Precinct desk area to change into civilian clothes, as he was going off duty for the day. Before leaving the Precinct, he discussed the missing person searches with the 49<sup>th</sup> Precinct Detective Squad Commander and a Detective. At approximately 1745 hours, Inspector Dowling returned to the Precinct desk, where he saw Respondent and called him into his office. He waited for Respondent but he did not come in. Inspector Dowling went back to the Precinct desk, where Respondent was still seated, and directed him to come into his office a second time. (Tr. 13-14)

Inspector Dowling testified that when Respondent finally entered his office, he slammed the door behind him so hard that he dislodged particles from the ceiling tiles. The tribunal received in evidence a photograph of a couch located inside Inspector Dowling's office that purportedly depicts the particulate matter dislodged from the ceiling tiles when Respondent slammed Inspector Dowling's door (Tr. 13-14, 24-25; Dep. Ex. 1F).

While seated at his desk, Inspector Dowling asked Respondent why he had slammed the door so hard. Respondent replied, in sum and substance, that "he couldn't take this shit anymore," that he was tired and did not want to be in Inspector Dowling's office when he had things to do. Inspector Dowling directed him to sit down and calm down. Instead, Respondent replied, "What are you going to do, fucking suspend me?" Inspector Dowling replied, "If you continue to behave this way, I will". At that point, while standing over Inspector Dowling's desk, Respondent opened his uniform shirt, removed his shield, and slammed it on the desk, stating "Suspend me, mother-fucker" Respondent then removed his Department firearm from his waistband and also slammed it down on Inspector Dowling's desk. Inspector Dowling testified that the firearm was

loaded and he was approximately 17 inches away from Respondent during this exchange. (Tr. 25-27).

Respondent then told Inspector Dowling, "I don't have to listen to you, I'm leaving." Inspector Dowling ordered Respondent not to leave, and advised him to comply, but Respondent left nonetheless. Sergeant Kevin Kavanagh, the patrol supervisor that day, entered the Inspector's office and they began discussing what had just transpired with Respondent. A couple of minutes later, Respondent re-entered Inspector Dowling's office, placed two firearm magazines on his desk and stated, "You forgot these, mother-fucker." Respondent stated that he didn't have to take this "shit" anymore and that he "didn't have to listen to him." Inspector Dowling stood up from his desk chair, with the loaded firearm still on the desk, when Respondent began moving toward him. Sergeant Kavanagh stepped between them. Inspector Dowling again explicitly ordered Respondent to stay inside the precinct and ordered Sergeant Kavanagh to stay with Respondent and not permit him to leave the building. Respondent then stated, "What are you going to do now, mother-fucker, hit me?" Inspector Dowling replied that he was not going to hit him but that he "forgot something -- you forgot to give me your ID card." Respondent removed his identification card from his wallet and threw it on the couch. Inspector Dowling picked up the identification card and Sergeant Kavanagh removed Respondent from the office, while apologizing for Respondent's behavior. Inspector Dowling phoned Chief Gomez, the Bronx Chief of Patrol, and reported the incident. (Tr. 28-32)

In addition to testifying in his own behalf, Respondent called three witnesses: Sergeant Kevin Kavanagh, Police Officer Christopher McGrisken and retired Police Officer [REDACTED]. Their respective testimonies are summarized below.

At the hearing, Respondent conceded that on the date in question, there was an investigation concerning a special category missing person who required medication but had not taken it. Respondent reported approximately 20 minutes early for a tour of duty which commenced at 1450 and ended at 2359. Upon assuming the duties as Desk Sergeant at approximately 1500 hours, he had a conversation with Lieutenant Decker, whom he observed exiting Inspector Dowling's office. Lieutenant Decker asked Respondent if he knew the whereabouts of Sergeant Johnson, to which Respondent replied that he was upstairs changing into his uniform. Lieutenant Decker then instructed Respondent to inform Sergeant Johnson that Inspector Dowling wanted him to go to the 49<sup>th</sup> Precinct to relieve Sergeant Rojas. Respondent replied, "No problem" (Tr. 109-110)

Respondent attempted to call Sergeant Johnson by mobile phone but was unsuccessful in placing the call. He then proceeded upstairs to the Sergeant's locker room and informed Sergeant Johnson that Inspector Dowling wanted him to go to the 49<sup>th</sup> Precinct to relieve Sergeant Rojas. According to Respondent, Sergeant Johnson replied, "No problem." Respondent returned to the desk area where he again encountered Lieutenant Decker, reporting to her that he had informed Sergeant Johnson of Inspector Dowling's directive. Respondent observed Sergeant Johnson enter Inspector Dowling's office subsequent to their conversation in the locker room. (Tr. 110-111)

When Sergeant Johnson exited Inspector Dowling's office, he approached Respondent and asked whether any cars were available for transport. Respondent replied

that there were none but together they ascertained that there was one sector car which could be made available. Respondent contacted Central and asked them to have that sector contact the command. The officers in the sector car contacted Respondent and informed him that they were finishing a job. Respondent advised them that their car was needed and that they would be reassigned to another vehicle. The officers acknowledged Respondent's direction and stated that they would return to the command shortly. Respondent passed this update to Sergeant Johnson and detailed his telephone switchboard operator to drive Sergeant Johnson once the sector car returned to the precinct. (Tr. 112-113).

Respondent testified that his tour was busier than normal, with CCRB complainants adding to the normal workload. Approximately 45 minutes to an hour after he had passed on Inspector Dowling's directives to Sergeant Johnson, Inspector Dowling came out of his office, went behind the precinct desk and in what Respondent characterized as a "demanding tone, almost yelling" asked "Where's Sergeant Rojas? Where's Sergeant Johnson?" Respondent replied, "Sir, they should be at the 49 where you wanted them." Respondent explained to Inspector Dowling that they were delayed because he experienced a problem finding a sector car. According to Respondent, Inspector Dowling then replied, "Well, get him over there." Respondent acknowledged the directive, stating "Yes, sir; I'll reach out to them and see where they are." Respondent called Sergeant Johnson at about 1600, who informed him that he was still outside the 52<sup>nd</sup> Precinct waiting for the sector car to arrive. Respondent told Sergeant Johnson, "Inspector Dowling is looking for you guys, he wants to know your

whereabouts, and you need to get over there." Respondent did not recall which sector car came in but Sergeant Johnson took someone's car and departed. (Tr. 114-115).

Respondent testified at trial that at approximately 1800, Inspector Dowling emerged from his office wearing civilian clothes and asked Respondent where Sergeant Rojas was. Respondent replied, "He should still be in the 49 handling the missing." Inspector Dowling then asked, "Where's Sergeant Johnson?" in a tone Respondent described as "demanding and yelling." Respondent answered, "They should still be at the 49 and I can reach out to him; I can call him, see where they are." At that point, according to Respondent, Inspector Dowling said, "In my office." During the aforementioned exchange, Respondent had a civilian complainant at the desk who he was assisting. (Tr. 114-116)

Respondent explained that as he entered Inspector Dowling's office and attempted to close the door behind him, it inadvertently slammed shut. Inspector Dowling shouted, "Did you have to slam my fucking door?" to which Respondent replied, "Sir, I'm tired of this." Inspector Dowling then said, "You're tired of what? Give me your gun and shield right now." Respondent replied "Fuck it; here," taking off his shield, removing his firearm from his waistband and placed them on Inspector Dowling's desk. Inspector Dowling then informed Respondent that he was suspended. As Respondent began to leave the office, Inspector Dowling shouted, "Where the fuck do you think you're going? Sit the fuck down." As Respondent opened the office door, Inspector Dowling ran past him and slammed the door, telling Respondent "Sit the fuck down." Respondent opened the office door, went to the locker room and changed into civilian clothing. After Respondent opened his locker, he realized he still had two magazines for his firearm in



his gun belt, so he removed them and returned to Inspector Dowling's office. He knocked on the door and heard someone say, "Come in." Respondent entered the office and found Inspector Dowling and Sergeant Kevin Kavanagh inside. He walked into the office, placed the magazines on the desk and turned to walk out. Inspector Dowling yelled "Where are you going?" Respondent replied "Well, I'm suspended; I'm leaving." Inspector Dowling then said "You can't go anywhere," then began yelling and cursing, to which Respondent replied in kind. When Inspector Dowling rose from behind the desk and began advancing toward Respondent with his hand up, pointing his finger, Sergeant Kavanagh stepped between both men. Respondent asked Inspector Dowling if he was going to hit him, to which he replied "No, I'm not going to hit you Sergeant." Inspector Dowling went back behind his desk, sat down and asked Respondent for his identification card. Respondent replied, "Yes, sir," and placed the card on the couch. After Sergeant Kavanagh directed Respondent to wait for him outside, he left the office. (Tr. 116-117, 121-123)

Sergeant Kavanagh was not present during the first interaction between Respondent and Inspector Dowling but was in the Inspector's office when Respondent entered for a second time. According to Kavanagh, Inspector Dowling stood up from his desk and told Respondent that he needed his identification card. Respondent replied, "are you going to hit me?" Inspector Dowling said, "no" and repeated that he needed Respondent's card. Respondent then threw the card on a couch next to the Inspector's desk. Respondent and Dowling were yelling and cursing at each other during the exchange. At trial Kavanagh also corroborated that several missing person cases were being investigated that day and that the precinct was busy. When asked if Inspector

Dowling had a reputation for raising his voice and yelling at people. Sergeant Kavanagh stated that he had no personal knowledge of that and that he would not speculate. (Tr. 70, 72, 76-77, 79-80).

Police Officer McGriskin testified that he had been assigned to the 52<sup>nd</sup> Precinct for approximately three years and was familiar with his Commanding Officer, Inspector Dowling. When asked whether Inspector Dowling had a reputation for being excitable and demanding, Officer McGriskin said "He expected you to do your job." Officer McGriskin was present inside the precinct processing an arrest when he overheard what appeared to him to be some sort of argument between Inspector Dowling and Respondent. Once he recognized the voices of his Commanding Officer and Respondent, Officer McGriskin determined that he wanted to remove himself from the situation. Officer McGriskin suspended his arrest processing and resumed it after the incident had run its course. (Tr. 82, 84-85)

Retired Police Officer [REDACTED] was called as a character witness for Respondent. At the time he worked with Respondent, both men served under Inspector Dowling, who commanded the 33<sup>rd</sup> Precinct. Mr. [REDACTED] testified that Respondent had a good reputation and had a "military-type background." Mr. [REDACTED] also testified to Inspector Dowling's general reputation for being demanding and losing his temper. (Tr. 90-92)

Given the totality of circumstances established by the record, this tribunal credits the testimony of Inspector Dowling. This tribunal found Respondent's testimony to be unconvincing and tailored to minimize the role he played. Such testimony is consistent with his obvious interest in the outcome of this case and the strong motive he has to

falsely deny any misconduct. Moreover, with the exception of Kavanagh, the witnesses called by Respondent were of little probative value.

In contrast, Inspector Dowling's account was both straightforward and logical – persuasive indicators of truthfulness. The fact that he promptly reported the incident to Chief Gomez, and memorialized the incident in a contemporaneous memorandum recording the facts, also supports a finding that his testimony was credible and forthright.

More importantly, based upon the entire record, this tribunal can find no credible evidence of bias against Respondent. Inspector Dowling testified that he previously supervised Respondent when he was Commanding Officer of the 33<sup>rd</sup> Precinct. In that regard, he recalled favorably Respondent's performance as a member of the Schools Team. Based upon Respondent's performance, Inspector Dowling endorsed his request for assignment to the Narcotics Division. According to Respondent's own testimony, Inspector Dowling personally requested that he be assigned to the 52<sup>nd</sup> Precinct upon his promotion to Probationary Sergeant. Inspector Dowling testified further that he saw Respondent as a Sergeant with potential whom he was grooming for greater responsibility and that the incident which is the subject of this proceeding was unexpected. (Tr. 33, 35-36, 105)

Accordingly, I credit Inspector Dowling's testimony and find that Respondent violated Patrol Guide Sections 203-03, Page 1, Paragraph 2 and 203-09, Page 1, Paragraph 2 by failing to obey Inspector Dowling's order to calm down<sup>1</sup> and by being discourteous and using profane language during an exchange with his commanding officer.

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<sup>1</sup> Specification 1 states that Inspector ordered Respondent to "lower his voice." At trial, however, Inspector Dowling testified that he ordered Respondent to "calm down." Despite the difference in the descriptive language used, the intent of the order was clear – Respondent was ordered by his superior officer to compose himself, which would include lowering his voice.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 2, 2001. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

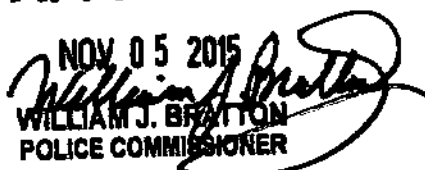
The Department contends that the appropriate penalty is the forfeiture of the 34 days he served while on suspension, time and benefits for the time he was under suspension, and one year dismissal probation. The Advocate further argues that a paramilitary organization cannot function effectively if members of service challenge and berate supervisors, and disobey orders. I agree.

In this case, the evidence of discourtesy toward Inspector Dowling was overwhelming. The purpose of the original exchange was to correct Respondent's professional conduct as was Inspector Dowling's duty to do. Respondent spoke disparagingly of his commanding officer in the presence of another sergeant and within earshot of a police officer assigned to the command. In fact, the officer who heard the exchange between Respondent and Inspector Dowling was so disturbed by it he chose to remove himself from earshot and completed the arrest processing of a juvenile arrestee after it was over.

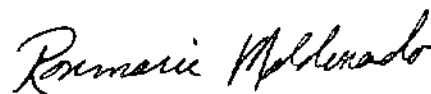
This tribunal heard no evidence which served to either mitigate or extenuate the gravity of the offense. Accordingly, I recommend that Respondent forfeit the 34 days he served on suspension. I further recommend that Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period

of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. This penalty is consistent with other penalties for similar offenses. For example, in *Case No. 70405/95* (May 5, 1996), a nine year police officer, with no prior disciplinary record, was placed on dismissal probation and forfeited thirty (30) suspension days after telling a sergeant, "I was not fucking late and you are not my fucking father" and calling the sergeant a "fucking idiot," in addition to refusing failing to comply with an order to remain in the sergeant's office. In *Case No. 77126/01* (January 30, 2003), an eighteen year police officer, with no prior disciplinary record, forfeited thirty (30) suspension days and was placed on one-year dismissal probation after kicking a chair and stating, "This is fucking bullshit" in response to a supervisor confronting him about smoking in the precinct. More recently, in *Case No. 83547/07* (November 22, 2010), a fifteen year detective, with no prior disciplinary record, forfeited nine (9) vacation days, thirty-one (31) suspension days and was placed on one year dismissal probation for telling a sergeant to "go fuck himself" and telling a lieutenant, "All you management types stick together."

**APPROVED**

NOV 05 2015  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

Respectfully submitted,

  
Rosemarie Maldonado  
Deputy Commissioner Trials

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
DETECTIVE ANTHONY MARION  
TAX REGISTRY NO. 928705  
DISCIPLINARY CASE NO. 2013-9555

Respondent received an overall rating of 4.5, 2.5, and 3.0, respectively, on his last three performance evaluations. He has been awarded two medals for Excellent Police Duty and one medal for Meritorious Police Duty. [REDACTED]

He was suspended from duty from April 29, 2013 to November 28, 2013, and placed on modified duty from November 29, 2013 to April 17, 2014, as a result of the charges and specifications in this case. He has no prior formal disciplinary record.

For your consideration.



Rosemarie Maldonado  
Deputy Commissioner Trials